

PREHEARING CONFERENCE  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:	)	
	)	
Application for Small Power	)	Docket No.
Plant Exemption, Modesto	)	01-SPPE-1
Irrigation District	)	
-----	)	

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM A  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

TUESDAY, AUGUST 7, 2001  
10:00 A.M.

Reported by:  
Valorie Phillips  
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Garrett Shean, Hearing Officer

STAFF PRESENT

Kerry Willis, Staff Counsel

Sandra Fromm, Project Manager Liaison

PUBLIC ADVISER

Roberta Mendonca

APPLICANT

Scott T. Steffen, Assistant General Counsel

Gregory E. Salyer, Generation Manager

Susan Strachan, Consultant, Environmental Project  
Manager

Modesto Irrigation District

Randy Erickson

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1 P R O C E E D I N G S

2 10:00 a.m.

3 HEARING OFFICER SHEAN: Good morning,  
4 I'm Garret Shean, I'm the Hearing Officer in the  
5 Modesto Irrigation Woodland Generation Station 2  
6 SPPE.

7 This morning we're conducting a  
8 prehearing conference anticipating evidentiary  
9 hearings on August 13th. The purpose of the  
10 meeting today is to assess our readiness to go  
11 forward with those hearings to identify areas of  
12 agreement and dispute among the parties and to  
13 discuss the procedures for the evidentiary  
14 hearing.

15 As a convenience to parties and members  
16 of the public who could not attend this event in  
17 Sacramento, we have a teleconference line open  
18 which is a toll free line. And so far I don't  
19 believe anyone has availed themselves of the use  
20 of that. But should that occur, we'll break in,  
21 have them identify him- or herself, and proceed  
22 from that point forward.

23 What I intend to do after we get done  
24 with some introductions is to go through the list  
25 in appendix A by which we will be reviewing,

1 subject by subject, the content of the initial  
2 study.

3 Which we want to determine is whether  
4 or not any party requests a hearing on any issue.  
5 If not, it would be the Committee's intention to  
6 have all matters that are uncontested presented by  
7 declaration at our evidentiary hearing in Modesto  
8 on Monday.

9 So, without further ado, why don't we  
10 have the applicant introduce itself, and the  
11 Commission Staff. The Commission's Public Adviser  
12 is here to assist any member of the public who  
13 either comes to this meeting or participates  
14 through the teleconference, and we thank you, Ms.  
15 Mendonca, for being here. And hopefully we'll  
16 come up with someone who wants to participate.

17 So, with that, let's go to the  
18 applicant, please.

19 MR. STEFFEN: Good morning, my name is  
20 Scott Steffen; I'm an attorney for Modesto  
21 Irrigation District, the applicant in this matter.  
22 And to my immediate right is Susan Strachan, who  
23 is essentially our Project Manager.

24 And to her right is Greg Salyer, who is  
25 the MID person responsible for heading up the

1 effort for the application, for the exemption.  
2 Also with us today is Randy Erickson.

3 HEARING OFFICER SHEAN: Okay. And the  
4 Commission Staff.

5 MS. WILLIS: Thank you. I'm Kerry  
6 Willis, Staff Counsel. And to my left is Sandra  
7 Fromm, who is the Project Manager Liaison. Susan  
8 Lee is the Project Manager, and she was unable to  
9 be here today.

10 HEARING OFFICER SHEAN: Okay. Why  
11 don't we find out, first of all, if there are any  
12 issues or items that the parties want to bring to  
13 the Committee initially so that we can address  
14 that.

15 I guess, in discussions we had just  
16 before the commencement of the meeting here,  
17 understand that there's a possible revision of one  
18 of the air quality construction conditions. So do  
19 you want to address that just right off the top?

20 MS. STRACHAN: Yes. This is Susan  
21 Strachan. There's an air quality condition, AQC-  
22 2, that we are going to talk with air quality  
23 staff. Our understanding is there may be a  
24 version of the condition available in draft form  
25 that is, might be easier from a compliance

1       standpoint. So we want to talk to the CEC Staff  
2       air quality -- for air quality, and then the head  
3       of compliance to see if it's feasible to replace  
4       this new draft of the condition with the condition  
5       that we have in the draft final initial study.

6               HEARING OFFICER SHEAN: Okay. My sense  
7       of the requirements of CEQA is that any  
8       modifications to the conditions that are equal to  
9       or more restrictive than what appears in the  
10      initial study would not require the essentially  
11      republishing of that document for the purpose of  
12      a new public comment period.

13             I think what we should do with regard  
14      to this one is allow the staff and the applicant  
15      an opportunity to review this new language. And  
16      if you can, come to us by Monday with something  
17      which you've agreed upon, if you have.

18             And if it's apparent by the language  
19      that it is either equal to or more restrictive,  
20      then the Committee will be in the position of  
21      merely accepting that as an amendment to the  
22      initial study. And ultimately just have the  
23      language change incorporated at the point that the  
24      decision is rendered and the compliance edition of  
25      the document is prepared.



1                   Since we're on the subject of air  
2           quality, is there any other matter in air quality  
3           that's subject to contest, or would you regard  
4           this as a contested area?

5                   MS. STRACHAN:  It's uncontested.

6                   MS. WILLIS:  We agree.

7                   HEARING OFFICER SHEAN:  Staff's --

8                   MS. WILLIS:  Staff agrees.

9                   HEARING OFFICER SHEAN:  Okay.

10                  Is there any other subject matter  
11           that's similar to that air quality?  From the  
12           applicant's perspective, any other minor changes,  
13           modifications or something like that?

14                  MS. STRACHAN:  There's nothing  
15           pertaining to permit conditions.  There are a  
16           couple clean-up items that we found, but nothing  
17           that would be considered a substantive change to  
18           the document.

19                  HEARING OFFICER SHEAN:  Okay.  And my  
20           understanding is that those clean-up items  
21           essentially are just some of the language that  
22           appears in the initial study that could be revised  
23           to either make it more accurate or clearer or  
24           something like that.  And I guess it's probably  
25           appropriate to say that at this point the

1 Committee does not foresee republishing or re-  
2 issuing the initial study, even with such  
3 modifications.

4 MR. STEFFEN: At the most, I think,  
5 that all that would be necessary is perhaps an  
6 errata sheet --

7 HEARING OFFICER SHEAN: All right.

8 MR. STEFFEN: -- explaining. For  
9 example, in one of the air quality issues there's  
10 a reference to VOCs and carbon monoxide, where the  
11 reference actually should only be to carbon  
12 monoxide.

13 So we can just, by an errata sheet,  
14 reference that the VOC should be deleted from  
15 that.

16 HEARING OFFICER SHEAN: Okay, that  
17 sounds fine. Maybe what we'll do is if you can  
18 put together that errata sheet, we will somehow  
19 incorporate that into what we're doing, and  
20 indicate that these are essentially nonsubstantive  
21 changes, and don't alter any aspect of the  
22 decision, but are corrections.

23 MR. STEFFEN: Right. They don't alter  
24 the outcome or the imposition of conditions.

25 HEARING OFFICER SHEAN: Well, and there

1       are bound to be such things when a document like  
2       this is produced in the time that it was. And we  
3       should compliment the staff on having gotten it  
4       done.

5                       Okay. If there's nothing else in air  
6       quality, why don't we sort of just go through the  
7       list. We would have noise, then, is that  
8       uncontested?

9                       MS. STRACHAN: Yes.

10                      MR. STEFFEN: Yes.

11                      HEARING OFFICER SHEAN: And biology,  
12       uncontested? Okay. And water resources?

13                      MR. STEFFEN: Uncontested.

14                      HEARING OFFICER SHEAN: Now, from the  
15       Committee's perspective, and I would say this  
16       addresses a larger policy issue that is in front  
17       of the Commission even as we are dealing with this  
18       crisis circumstance, and that has to do with the  
19       use of potable inland waters for cooling.

20                      Now, as we know, that's what's intended  
21       for this particular project. And by a reading of  
22       the initial study it appears that the City of  
23       Modesto is going to be able to provide this  
24       project the water for its cooling and other uses.

25                      And that the amount of water being

1 provided is very small compared to the total  
2 capacity of the City's system to provide water.

3 But I think what -- that's the  
4 circumstances that we have today and what the  
5 Committee would like to do, and is doing in other  
6 cases, is having a periodic review of the  
7 availability of nonpotable inland waters, such as  
8 reclaimable or recyclable water. So that we can  
9 understand in years out whether or not the  
10 continued use of potable water is creating a water  
11 supply impact. And whether there are other  
12 resources available at that time that might  
13 address that.

14 And so we have a couple choices here.  
15 We can either ask the staff to prepare a draft of  
16 such a condition and circulate that to the  
17 applicant for your review and comment. Or we could  
18 have the applicant do it.

19 Would the staff be prepared to go ahead  
20 and do something like that?

21 MS. WILLIS: Yes, I believe we would.

22 HEARING OFFICER SHEAN: Okay. And when  
23 it would occur is sort of open. Whether or not we  
24 would -- you currently have an NPDES, right, is  
25 that correct, for your facility?

1 MS. STRACHAN: The water will be  
2 discharged to the City, which then has an NPDES  
3 permit. So we don't have -- we are --

4 HEARING OFFICER SHEAN: You don't have  
5 one, yourselves?

6 MS. STRACHAN: Correct.

7 HEARING OFFICER SHEAN: Because I was  
8 trying to find something, you know, a cyclical  
9 event maybe to tie this to that occurs at, you  
10 know, five-year or seven-year time span. Because  
11 you would anticipate the life of your facility  
12 probably as on the order of 30 years, so hitting  
13 this either four, five or six times in that is  
14 probably what we would have in mind.

15 So, all right. I think that gives  
16 sufficient guidance to the staff. If you need  
17 more, let us know. But you have the general idea.

18 MR. STEFFEN: What's the vision of the  
19 Committee in terms of the study? What comes out  
20 of that study?

21 HEARING OFFICER SHEAN: I think what  
22 comes out of the study is two things. Number one  
23 would be an assessment of the impact of the  
24 current level of the water use of the facility on  
25 the resources that are -- the potable water

1 resources that are available to it.

2 Obviously so long as they remain in the  
3 range of non-impacting, such as they are today,  
4 that's not a matter that should be of any  
5 particular concern to the Committee or the  
6 Commission, let alone sort of the State of  
7 California, in the interests of the best use of  
8 probably what is its most precious resource.

9 If upon the analysis we find that the  
10 amount of water begins to be significant, or that  
11 there are issues related to that, then what would  
12 become more significant is, well, is there an  
13 alternate supply available. And that would be the  
14 second component, which is an analysis of  
15 alternative cooling water supplies should the use  
16 of the current potable water begin to appear to  
17 have an impact.

18 That's what the Committee has in mind.

19 MS. WILLIS: In any other cases has  
20 there been a condition such as this, or this would  
21 be a new condition?

22 HEARING OFFICER SHEAN: This would be  
23 new. I think if you want to track down something  
24 that might be of some assistance, you might find  
25 it in the Valero AFC, which is being currently

1 discussed.

2 I know that there was a condition in  
3 the current staff assessment in the Valero  
4 proceeding, and that's one that I'm on. And the  
5 circumstances are different, where they have a  
6 huge water use in the refinery, and the water use  
7 in the cogeneration facility is basically de  
8 minimis compared to the refinery use.

9 However, let me indicate what you would  
10 see in the current version of the staff assessment  
11 i believe is being modified because the timelines  
12 and other things like that are too restrictive,  
13 more restrictive than you will probably see in the  
14 ultimate version of the staff's assessment.

15 And I would say what the Committee  
16 would be contemplating as something of the  
17 timeframes that you're talking about. And in that  
18 particular case there are other considerations.

19 So, it's somewhat a model, but it's not  
20 the model.

21 MR. STEFFEN: We'll work with staff to  
22 come up with something satisfactory before Monday.

23 HEARING OFFICER SHEAN: Okay. That  
24 would be great.

25 Then we have water quality and soils.

1 Is that an uncontested area?

2 MR. STEFFEN: Yes.

3 HEARING OFFICER SHEAN: Visual  
4 resources? Also uncontested?

5 MS. STRACHAN: Yes.

6 MR. STEFFEN: -- that was all --

7 HEARING OFFICER SHEAN: Right, yeah,  
8 now I read through that. Apparently we've dealt  
9 with the visual plumes from the HRSG and the  
10 cooling tower.

11 MR. STEFFEN: Yes, that's correct.

12 HEARING OFFICER SHEAN: All right. I'm  
13 not sure whether we had project alternatives  
14 discussed in here or not. This list may have come  
15 from -- all right, just take a pass on that, a  
16 not-apply.

17 Public health, same, uncontested?

18 MR. STEFFEN: Yes.

19 HEARING OFFICER SHEAN: And traffic and  
20 transportation?

21 MR. STEFFEN: Uncontested.

22 HEARING OFFICER SHEAN: Also  
23 uncontested. And I guess, so to the staff we've  
24 worked out a satisfactory -- I guess one of the  
25 things that became apparent in the site visit was



1 the brief stretch of is it Kansas?

2 MR. STEFFEN: Kansas --

3 MS. STRACHAN: Kansas and Graphics.

4 HEARING OFFICER SHEAN: Right.

5 MS. STRACHAN: And the commitment is  
6 that we will prepare a traffic control plan that  
7 addresses it, and specifically workers traveling  
8 on nonpeak hours, or if it ends up that they do  
9 need to travel on peak hours, that they'll take a  
10 route such that it won't diminish the level of  
11 service, to be on a level, LOS of E, which is what  
12 Modesto considers acceptable.

13 HEARING OFFICER SHEAN: A D?

14 MS. STRACHAN: E.

15 HEARING OFFICER SHEAN: An E, an LOS-E?

16 MS. STRACHAN: That's what the City has  
17 identified as being acceptable.

18 HEARING OFFICER SHEAN: Okay. I guess  
19 so long as I don't have to drive it --

20 (Laughter.)

21 HEARING OFFICER SHEAN: All right,  
22 socioeconomics.

23 MR. STEFFEN: No issues.

24 HEARING OFFICER SHEAN: Okay. And land  
25 use obviously shouldn't be any issues, right?

1 MR. STEFFEN: Correct.

2 HEARING OFFICER SHEAN: Transmission  
3 system engineering and T-line safety and nuisance,  
4 both.

5 MR. STEFFEN: No issues.

6 HEARING OFFICER SHEAN: No issues.  
7 Efficiency, was there an efficiency -- you called  
8 it something different here.

9 MS. STRACHAN: Energy resources I think  
10 it's referred to.

11 MR. STEFFEN: No issues.

12 HEARING OFFICER SHEAN: And facility  
13 design, let me just find my --

14 MS. STRACHAN: I don't believe there's  
15 a section pertaining to facility design.

16 HEARING OFFICER SHEAN: No, you didn't  
17 have that.

18 MS. STRACHAN: Or reliability.

19 HEARING OFFICER SHEAN: But you will be  
20 reliable, right?

21 MR. STEFFEN: We are reliable; we'll be  
22 even better.

23 HEARING OFFICER SHEAN: Okay. Let's  
24 see, was there a worker safety. I guess no worker  
25 safety, is that right, in here? I don't see it.

1 Cultural resources, yes?

2 MR. STEFFEN: We're okay with those  
3 conditions. No issues.

4 HEARING OFFICER SHEAN: Waste?

5 MR. STEFFEN: That's not a problem,  
6 either.

7 HEARING OFFICER SHEAN: Am I not seeing  
8 that?

9 MS. STRACHAN: I think the hazardous  
10 waste and hazardous materials are included in one  
11 section.

12 HEARING OFFICER SHEAN: Okay. And  
13 that's uncontested?

14 MS. STRACHAN: Correct.

15 MR. STEFFEN: Correct.

16 HEARING OFFICER SHEAN: Okay, and any  
17 problems with compliance conditions?

18 MR. STEFFEN: No.

19 HEARING OFFICER SHEAN: All right, and  
20 I guess there was also agricultural resources,  
21 which is uncontested?

22 MR. STEFFEN: Correct.

23 HEARING OFFICER SHEAN: Okay. Well,  
24 this is what I foresee then. We're going to  
25 probably have a very quick hearing in Modesto on

1 the morning of Monday, August 13th.

2 What we would like to see a declaration  
3 from any person who is competent to testify on the  
4 matters. In this case it could be, for the staff,  
5 like Susan Lee or I think you've identified  
6 independently the preparation team. And we'll  
7 admit those.

8 And the same thing from your side, both  
9 either from MID, consultants, or a combination  
10 thereof will be just fine.

11 MS. WILLIS: Excuse me, do we need to  
12 provide anything above and beyond what we have in  
13 the initial study? Because they have declarations  
14 for each of their sections.

15 HEARING OFFICER SHEAN: Let's see.

16 MS. WILLIS: All the way in the back.

17 HEARING OFFICER SHEAN: All right, the  
18 declarations are all in the back, is that right?

19 MS. WILLIS: Right. Along with the  
20 r,sum,s.

21 HEARING OFFICER SHEAN: No, that's  
22 fine. That will be good. So, something  
23 comparable to that.

24 MS. STRACHAN: From the applicant's  
25 perspective I would assume we would submit a

1 declaration that's similar to the type that is  
2 submitted by the staff?

3 HEARING OFFICER SHEAN: Someone merely  
4 needs to say, you know, kind of my own knowledge I  
5 prepared the AFC, the data responses and any other  
6 thing that you would like us to rely upon as the  
7 basis for the decision. And that's it.

8 MS. STRACHAN: In written form and then  
9 obviously --

10 HEARING OFFICER SHEAN: In written  
11 form, but we're not expecting a parade of people  
12 to come through.

13 What I will do is just as the staff has  
14 their declarations in the back here, I will ask,  
15 after on cue, Ms. Willis says, I now offer the  
16 declarations. I'll ask if there's an objection.  
17 If there's no objection, then they'll be admitted.  
18 And they will support the initial study and  
19 proposed mitigated negative dec.

20 Be sort of the same thing from you.  
21 Mr. Steffen would identify, I have the declaration  
22 of either a single person or the following people.  
23 I'd like to move them into evidence. Is there  
24 objection. In the absence of objection they'll  
25 come in and we're done.

1 I think what we'll also be talking  
2 about is making sure we have AQC right, number 2.  
3 And that we have this water resources thing right.  
4 And if there's any member of the public, or other  
5 agencies there, that wants to offer a comment,  
6 we'll do that.

7 And then we will be done. At that  
8 point probably it's just a matter of driving back  
9 to Sacramento --

10 (Laughter.)

11 HEARING OFFICER SHEAN: -- and  
12 releasing, because I have prepared the basic  
13 Committee proposed decision already. What I have  
14 to do then is probably to add the change of the  
15 AQC-2, whatever we do on the water, and maybe  
16 we'll include that errata sheet so present it to  
17 us in a format that we can probably electronically  
18 slip it in at the back. That would be great.

19 Then we're done. Then we just have to  
20 wait and pick a business meeting. And we have 21  
21 days, I think, is that right, from the issuance of  
22 the --

23 MR. STEFFEN: From the proposed  
24 decision.

25 HEARING OFFICER SHEAN: -- the proposed

1 decision. So three weeks from Monday or maybe  
2 Tuesday, but probably Monday, will be something on  
3 the order of the first week, or just after Labor  
4 Day in September.

5 So we'll probably pick whatever it is,  
6 the first business meeting that passes 21 days.

7 MS. WILLIS: And could we ask that the  
8 applicant provide staff a copy of the errata sheet  
9 before -- in advance so that we can review it just  
10 to make sure --

11 MR. STEFFEN: That's our --

12 MS. STRACHAN: Oh, absolutely.

13 HEARING OFFICER SHEAN: All right.

14 MR. STEFFEN: I have two housekeeping  
15 things, --

16 HEARING OFFICER SHEAN: Sure.

17 MR. STEFFEN: -- if I may. In the  
18 prehearing conference statement or order that was  
19 issued a week or so ago, it suggested that  
20 intervenors would be allowed to intervene up to, I  
21 can't think the date, but --

22 HEARING OFFICER SHEAN: Today.

23 MR. STEFFEN: Today's the last day?  
24 Close of business today is --

25 HEARING OFFICER SHEAN: Um-hum.

1 MR. STEFFEN: That's right.

2 HEARING OFFICER SHEAN: Well, I think,  
3 you know, right --

4 MR. STEFFEN: I assume that there won't  
5 be any, but under the rules intervenors are  
6 required to intervene within 30 -- or before 30  
7 days, 30 days prior to the first hearing. So that  
8 the time for intervenors is actually passed under  
9 the --

10 HEARING OFFICER SHEAN: Yeah, I think  
11 what we -- the reason for what we indicated in the  
12 order here is simply that in order to expedite  
13 this in the way that we're doing, the best way to  
14 do that is to have up to today's event be one at  
15 which someone has to participate. If you want to  
16 be in the case you have to have participated  
17 either in this conference physically here in  
18 Sacramento, on the telephone.

19 Or if you are not, you need to have  
20 sent us something in writing. I don't have  
21 anything in writing. So, once we're done here  
22 this morning, we're done. And there is no further  
23 opportunity to present any evidence in the case  
24 without a petition to essentially state the  
25 grounds why you should be allowed leave to



1       intervene, and leave to present evidence at the  
2       hearing.

3                   MR. STEFFEN:   Great, that takes care of  
4       both of my issues.

5                   HEARING OFFICER SHEAN:   Okay.   So, I  
6       mean the idea is to foster participation, but if  
7       you're not here, you're not here.

8                   Okay, with that then, why don't we  
9       adjourn today's event and look forward to seeing  
10      everyone on Monday, August 13th at 10:00 at the  
11      MID Headquarters in Modesto.

12                   Thank you very much.

13                   (Whereupon, at 10:30 a.m., the  
14      prehearing conference was concluded.)

15                               --o0o--

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## CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Prehearing Conference; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said conference, nor in any way interested in outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of August, 2001.

VALORIE PHILLIPS

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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